

METHOD AND SYSTEM FOR A  
COMPREHENSIVE LITIGATION EARLY WARNING SYSTEM

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application Serial Number 60/173,248 filed on December 28, 1999 and is hereby incorporated by reference.

BACKGROUND OF THE INVENTION

This invention relates to a method and process for providing a comprehensive early warning system for litigation, and in particular, a method and process that results in the avoidance of litigation in the business environment.

Litigation is usually the most expensive, and time-consuming, way to resolve a dispute between two, or more, parties. Major corporations often find themselves being sued over matters that could have been prevented if necessary information had been obtained at any early stage. Many times a suit is filed that is based upon a new interpretation of law, or regulation, of which the corporation had been previously unaware. The business may have a practice, now illegal under the new interpretation of a statute or regulations. If it is unaware of this new interpretation, it is open to litigation on this practice. Additionally, other companies in the same, or similar, business area may have been sued regarding a specific practice. A business aware of that suit could review its practices to determine its vulnerability to such a suit and make changes, if appropriate.

Significant class action suits can arise from business practices that are capable of repetition as to many customers. Often, litigation is the result of customer complaints being inadequately addressed. This is particularly true in the credit card business as well as in other consumer business and product liability areas. Where trends in complaints are captured early by an in-house legal operation, significant litigation for a certain practice being done, can be avoided. Consumer advocacy

group web sites and trade journals need to be watched to alert a business legal operation to matters that may become the subject of litigation so that the business can be warned and make changes where appropriate.

A comprehensive system to provide an early warning of practices that may become the subject of litigation is needed so that potential litigation can be avoided.

## SUMMARY OF THE INVENTION

The invention is a comprehensive warning of potential litigation that includes a process for gathering data from a wide range of internal and external sources and reviewing potential litigation issues from ~~said gathered data~~ <sup>the gathered data</sup>. The user may consult with outside counsel to obtain specialized assistance on selected issues. Based upon the data found, the user determines whether an issue justifies an Early Warning System Alert to the decision makers in the business. These are appropriate in cases where the Legal Operation believes that the reported issue may be significant. If issuing an Early Warning System Alert is justified, monitoring of any action on the issue is performed to ensure proper implementation.

The implementation of an Alert includes logging the Alert on a database for reference purposes. A decision is then made, by the appropriate management personnel, whether to implement any pre-litigation changes. There is a requirement to document any negative decision. Corrective action is assigned and a monitoring of the corrective action is implemented. A report of the implementation of the corrective action is provided to the litigation department. A follow-up is done periodically to make sure that the enacted actions are still in place and remain appropriate.

If an Early Warning System Alert is not justified, it is determined whether ~~said issue~~ <sup>the issue</sup> justifies an Emerging Issue Report, a warning device for less significant issues. If justified, the Emerging Issue Report is issued. If litigation on an issue occurs, the response is done in a traditional litigation manner, except that risk assessments are required within 60 days and early dispute resolution is considered for

all matters. A computer program implementing the early warning method includes data searching systems and tracking and monitoring features of the early warning method. In addition, the computer program permits the Early Warning System to issue the Early Warning Alert or the Emerging Issue Report.

#### BRIEF DESCRIPTION OF THE DRAWINGS

5                   The present invention is described, by way of example, with reference to the accompanying drawings, in which:

                  Figure 1 illustrates a flow diagram an exemplary embodiment of the litigation early warning system;

10                  Figure 2 illustrates a flow diagram of a second generation of an early warning system; and

                  Figure 3 illustrates a flow diagram of a third generation of an early warning system.

#### DETAILED DESCRIPTION

15                  As discussed above, information is available that if obtained and collated along subject areas would be useful in providing legal and management personnel an early warning of potential litigation. Figure 1 illustrates a flow chart of obtaining this information in an Early Warning System 10 and communicating it to the appropriate decision makers for their review and decision. The sources or suppliers of this information 12 in a credit card operation include: internal card services management; Customers (card holders); Clients (companies having private label credit cards); Regulators (i.e. FTC); Employees; Customer Service/Compliance

20                  Departments; Business Attorneys/Business Persons (via Early Notification Form, if appropriate); Outside Counsel; Legislative and Litigation monitoring; Press and other Media; and Internet Sources.

25                  The data inputted 14 may include Litigation and Legislative Monitoring by Outside Counsel; Other Industry Litigation and Legislative Trends;

Entity Trends; Entity Litigation Trends; Entity Litigation Dashboards (Data Tracking Charts); Customer Service Dashboards; Customer Service/Compliance/Business Departments; Attorneys/Business Persons; Warnings (via Early Notification Form if appropriate; Customer Complaint; Attorney Complaint (for Customer); Client Complaint; Regulatory Inquiry; Customer Advisory Panel (an internal group composed of attorneys representing consumer businesses) Litigation trends; Press/Media Inquiries, Internet Consumer Discussion or Complaint sites, Regulatory websites and publications and trade journals. The input of data may be done via computer word processing software, via litigation case management software, via fax and/or e-mail, via Teleconferences, via an Internet or web-enabled intranet site or an audio/video corporate broadcast.

The process 16 begins with the above noted inputs. The Litigation Group evaluates industry and internal litigation trends as well as Early Notification Warnings from the data inputted<sup>14</sup>. In addition the Litigation Group identifies by subject matter the internal practices that may be impacted by the data reported in steps 12 and 14. A potential issue checklist is created utilizing standard computer word processing software, such as Word, Word Perfect or Excel. A Litigation and Legislative Monitoring Report 20 is distributed by the business to a Consumer Advisory Panel composed of internal Litigation Counsel from all consumer businesses within the corporation. Both, the potential issue checklist and the Litigation and Legislative Monitoring Report are put on an internal website.

The Litigation Group assigns to internal attorneys (by subject matter expertise) for review and study 22. The internal attorneys conduct an initial assessment and communicate the result to the Litigation Group for prioritization 24. Potential issues not warranting further action are closed. For remaining potential issues, the internal attorneys meet with the appropriate business process or practice owners and/or appropriate compliance officers to more fully understand the process or practice at issue 26. The internal attorneys consult with outside counsel, if necessary, to obtain specialized assistance in evaluating an issue under review 28. The various potential issues are discussed at regular internal staff meetings 30. A decision is made as to whether an issue justifies an Early Warning System (EWS) Alert 32. An EWS

Alert is an urgent communication from the legal department to the senior management and all other lawyers of the business advising the immediate review and possible termination or modification of a business practice that the legal department understands to pose a potential significant litigation or regulatory risk. The purpose of the EWS Alert is that immediate action is required in the form of a review and if practiced, a decision whether or not to continue or modify the practice at issue. The EWS Alert is reserved for issues of high importance in a business. If the issue justifies an EWS Alert, the internal Legal Operation logs and distributes an EWS Alert to the Appropriate Business Process Owner, President and Senior Compliance Counsel on issues of concern to the business and suggests corrective action to avoid litigation 34. Emergency issues are handled on an expedited basis. A copy of the EWS Alert is copied to other businesses within the corporation that are potentially affected 36.

Details of the EWS Alert to a corporate parent and other potentially affected related organizations 36 are further illustrated in Figure 2. A decision of whether the EWS could apply to other related business is decided at 62. If the answer is "No", no further action 64 is required. If the answer is "Yes" 66, the EWS Alert is forwarded to various members of the management of the related business. These may include Consumer Advisory Panel members or Commercial Business with a copy to the Ultimate Corporate Parent's Director of Litigation, Corporate Parent's general Counsel and Corporate parent's Director of Litigation for further distribution as they deem appropriate.

Based upon the EWS Alert the Business Process Owner, President of the business and/or senior Compliance Counsel decides whether to make the pre-litigation changes recommended in the EWS Alert to avoid litigation 38. If the decision is "Yes" 40, a Closed Loop Compliance process is begun to ensure that the ordered change actually occurs within the business 42. If the decision is "No" 44, a Business Decision Rationale is documented 46.

~~The Closed Loop Compliance Process 60 is a third generation of the Early Warning System 70 as illustrated in Figure 3. The Closed Loop Compliance~~

~~Process begins at 42 as discussed above. The EWS Alert is logged on an EWS Alert Log Database 72. A Senior Compliance Counsel, Business Process Owner and/or President makes a decision whether to implement pre-litigation changes to avoid litigation 74. If the answer is "No", a business decision rationale is documented 76 on the EWS Alert Log Database. If the answer is "Yes", corrective action is assigned to the process owner/compliance owner. 78. The compliance issues from the EWS Alert are logged on a Compliance Issues Database 80. The Corrective Action is then implemented 82. The Senior Compliance Counsel reports implementation date of corrective action to the Litigation Group 84.~~

There is a quarterly follow-up of all open items 86 on the EWS Alert log database. The EWS database is updated to reflect that corrective action has been taken 88 as a result of the report from the Senior Compliance Counsel 84. An annual follow up on closed items to make sure corrective action is still in place and remains appropriate 90. The time frames in each of the steps outlined in this invention are exemplary and subject to adjustment by the user of the process. The important element is that time frames are set by policy and are part of the process.

*Sub at* If litigation nevertheless occurs, it is handled in the traditional manner 92. ~~This includes: receiving the complaint, gathering information, assign and manage outside counsel and resolve dispute 82.~~ A risk assessment of the matter is required within a predetermined time frame and early dispute resolution is considered on all appropriate matters. An exemplary time frame is approximately 60 days.

If the issue does not justify an EWS Alert, a second decision is made as to whether the issue justifies an Emerging Issue Report 50. An Emerging Issue Report is a form alert sent by the legal department to the senior management and all lawyers of the business that warns against a business practice posing a litigation or regulatory risk that the legal department believes is not practiced by the business or, if practiced, does not rise to the significance level of an EWS Alert. The purpose is to raise the business's awareness of an issue and provide a confirmation of current practices. It is a warning that an issue may deserve a review. If the issue does not justify an Emerging Issue Report 52, no further action is required 54.

If the issue does justify an Emerging Issue Report 56, the internal legal department logs and distributes an Emerging Issue Report to the business President and those directly reporting to him/her. The Emerging Issue Report warns against a business practice posing a legal or regulatory risk 58. The Director of Litigation of the business gives a monthly oral report of Emerging Issues to the Internal Compliance Review Board, composed of the business or entity President and those directly reporting to him/her <sup>28</sup> 60.

~~The present invention can be embodied in the form of computer-implemented processes and apparatuses for practicing those processes. The present invention can also be embodied in the form of computer program code containing instructions embodied in tangible media, such as floppy diskettes, CD ROMs, hard drives, or any other computer-readable storage medium, wherein, when the computer program code is loaded into and executed by a computer, the computer becomes an apparatus for practicing the invention. The computers used in the Litigation Early Warning System may be included in a computer network that includes a plurality of servers for accessing a plurality of network sites containing various types of content, which can be viewed and listened to as appropriate, and downloaded when desired, and that includes a plurality of client systems connected to a server for purposes of browsing the network sites.~~

~~The present invention can also be embodied in the form of computer program code, for example, whether stored in a storage medium, loaded into and/or executed by a computer, or transmitted over some transmission medium, such as over electrical wiring or cabling, through fiber optics, or via electromagnetic radiation, wherein, when the computer program code is loaded into and executed by a computer, the computer becomes an apparatus for practicing the invention. When implemented on a general-purpose microprocessor, the computer program code segments configure the microprocessor to create specific logic circuits.~~

The early warning litigation method uses a computer system, a computer program, and Internet and intranet systems, as well as traditional communication means, to implement the method. This includes a computer usable

medium having computer readable program code means embodied therein for an early warning of litigation. The computer readable program code programs the computer to perform search for and gather data from internal and external sources via an Internet or intranet system. ~~This may include the Internet or an intranet search for Input item 14 (as discussed above and shown in Figure 1) from suppliers of data listed under Supplier 12 (as discussed above and shown in Figure 1).~~ The computer readable program code and the computer assist a user in reviewing potential litigation issues from the gathered data. The computer is able to communicate with and consult with one or more outside counsel computer systems to obtain specialized assistance in selected issues. The computer is programmed to provide criteria for user to determine whether an issue justifies an Early Warning System Alert or an Emerging Issue Report. This may include estimated costs of changes necessary to avoid litigation as well as estimates of the likelihood of litigation. The computer is programmed to issue an Early Warning System Alert, if found justified, and to monitor any action from said Early Warning System Alert. If litigation does result, the computer monitors and assists the user to support the litigation in a traditional litigation manner.

The benefits of the Early Warning Litigation System include lower costs and reduced surprises. The pending litigation volume decreases and the business has a better understanding of potential litigation issues. This also results in better customer relations, and a better relationship with regulators, since the business is monitoring and addressing issues that are causing dissatisfaction, complaints and litigation. Litigation against a business can be considered a measure of dissatisfaction with a policy or practice of the business.

The Early Warning System described above has been described with specific reference to a credit card business. The embodiment of a method and process for an Early Warning Litigation System is by no means limited to a credit card business, but has applicability to all business entities. The range of application may include profit as well as not profit organizations. Any organization that is of any size needs to have an effective and comprehensive Early Warning Litigation System. In very large corporations, different divisions or groups in the corporation need to share their findings in the area of an early warning alert to other divisions and groups within

the corporation. With the use of Internet and Intranet facilities the finding of one group's early warning may be shared with other parts of a company. The sharing of information may extend outside of business to trade groups that have common interests. The use of various titles within an entity have been used for exemplary purposes. They are representative of a function, or a level of management.

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The present invention may be embodied in other specific forms without departing from its spirit or essential characteristics. The described embodiments are to be considered in all aspects only as illustrative and not restrictive. The scope of the invention is, therefore, indicated by the appended claims rather than the foregoing description. All changes, which come within the meaning and range of equivalency of the claims, are to be embraced within their scope.

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